

§ 136a.61

activities. In any event, any disclosure shall be subject to appropriate safeguards which will minimize the likelihood of disclosures of personal information in identifiable form.

Subpart G—Residual Status

§ 136a.61 Payor of last resort.

(a) The Indian Health Service is the payor of last resort of persons defined as eligible for contract health services under these regulations, notwithstanding any State or local law or regulation to the contrary.

(b) Accordingly, the Indian Health Service will not be responsible for or authorize payment for contract health services to the extent that:

(1) The Indian is eligible for alternate resources, as defined in paragraph (c), or

(2) The Indian would be eligible for alternate resources if he or she were to apply for them, or

(3) The Indian would be eligible for alternate resources under State or local law or regulation but for the Indian's eligibility for contract health services, or other health services, from the Indian Health Service or Indian Health Service funded programs.

(c) *Alternate resources* means health care resources other than those of the Indian Health Service. Such resources include health care providers and institutions, and health care programs for the payment of health services including but not limited to programs under title XVIII and XIX of the Social Security Act (i.e., Medicare, Medicaid), State or local health care programs and private insurance.

[55 FR 4609, Feb. 9, 1990]

PART 137—TRIBAL SELF-GOVERNANCE

Subpart A—General Provisions

Sec.

137.1 Authority, purpose and scope.

137.2 Congressional policy.

137.3 Effect on existing Tribal rights.

137.4 May Title V be construed to limit or reduce in any way the funding for any program, project, or activity serving an Indian Tribe under this or other applicable Federal law?

42 CFR Ch. I (10–1–05 Edition)

137.5 Effect of these regulations on Federal program guidelines, manual, or policy directives.

137.6 Secretarial policy.

Subpart B—Definitions

137.10 Definitions.

Subpart C—Selection of Indian Tribes for Participation in Self-Governance

137.15 Who may participate in Tribal Self-Governance?

137.16 What if more than 50 Indian Tribes apply to participate in self-governance?

137.17 May more than one Indian Tribe participate in the same compact and/or funding agreement?

137.18 What criteria must an Indian Tribe satisfy to be eligible to participate in self-governance?

PLANNING PHASE

137.20 What is required during the planning phase?

137.21 How does an Indian Tribe demonstrate financial stability and financial management capacity?

137.22 May the Secretary consider uncorrected significant and material audit exceptions identified regarding centralized financial and administrative functions?

137.23 For purposes of determining eligibility for participation in self-governance, may the Secretary consider any other information regarding the Indian Tribe's financial stability and financial management capacity?

137.24 Are there grants available to assist the Indian Tribe to meet the requirements to participate in self-governance?

137.25 Are planning and negotiation grants available?

137.26 Must an Indian Tribe receive a planning or negotiation grant to be eligible to participate in self-governance?

Subpart D—Self-Governance Compact

137.30 What is a self-governance compact?

137.31 What is included in a compact?

137.32 Is a compact required to participate in self-governance?

137.33 May an Indian Tribe negotiate a funding agreement at the same time it is negotiating a compact?

137.34 May a funding agreement be executed without negotiating a compact?

137.35 What is the term of a self-governance compact?

Subpart E—Funding Agreements

137.40 What is a funding agreement?

137.41 What PSFAs must be included in a funding agreement?

137.42 What Tribal shares may be included in a funding agreement?

137.43 May a Tribe negotiate and leave funds with IHS for retained services?

TERMS IN A FUNDING AGREEMENT

137.45 What terms must be included in a funding agreement?

137.46 May additional terms be included in a funding agreement?

137.47 Do any provisions of Title I apply to compacts, funding agreements, and construction project agreements negotiated under Title V of the Act?

137.48 What is the effect of incorporating a Title I provision into a compact or funding agreement?

137.49 What if a Self-Governance Tribe requests such incorporation at the negotiation stage of a compact or funding agreement?

TERM OF A FUNDING AGREEMENT

137.55 What is the term of a funding agreement?

137.56 Does a funding agreement remain in effect after the end of its term?

137.57 How is a funding agreement amended during the effective period of the funding agreement?

Subpart F—Statutorily Mandated Grants

137.60 May a statutorily mandated grant be added to a funding agreement?

137.65 May a Self-Governance Tribe receive statutorily mandated grant funding in an annual lump sum advance payment?

137.66 May a Self-Governance Tribe keep interest earned on statutorily mandated grant funds?

137.67 How may a Self-Governance Tribe use interest earned on statutorily mandated grant funds?

137.68 May funds from a statutorily mandated grant be added to a funding agreement be reallocated?

137.69 May a statutorily mandated grant program added to a funding agreement be redesigned?

137.70 Are the reporting requirements different for a statutorily mandated grant program added to a funding agreement?

137.71 May the Secretary and the Self-Governance Tribe develop separate programmatic reporting requirements for statutorily mandated grants?

137.72 Are Self-Governance Tribes and their employees carrying out statutorily mandated grant programs added to a funding agreement covered by the Federal Tort Claims Act (FTCA)?

137.73 What provisions of Title V apply to statutorily mandated grants added to the funding agreement?

Subpart G—Funding

GENERAL

137.75 What funds must the Secretary transfer to a Self-Governance Tribe in a funding agreement?

137.76 When must the Secretary transfer to a Self-Governance Tribe funds identified in a funding agreement?

137.77 When must the Secretary transfer funds that were not paid as part of the initial lump sum payment?

137.78 May a Self-Governance Tribe negotiate a funding agreement for a term longer or shorter than one year?

137.79 What funds must the Secretary include in a funding agreement?

PROHIBITIONS

137.85 Is the Secretary prohibited from failing or refusing to transfer funds that are due to a Self-Governance Tribe under Title V?

137.86 Is the Secretary prohibited from reducing the amount of funds required under Title V to make funding available for self-governance monitoring or administration by the Secretary?

137.87 May the Secretary reduce the amount of funds due under Title V in subsequent years?

137.88 May the Secretary reduce the amount of funds required under Title V to pay for Federal functions, including Federal pay costs, Federal employee retirement benefits, automated data processing, technical assistance, and monitoring of activities under the Act?

137.89 May the Secretary reduce the amount of funds required under Title V to pay for costs of Federal personnel displaced by contracts under Title I or self-governance under Title V?

137.90 May the Secretary increase the funds required under the funding agreement?

ACQUISITION OF GOODS AND SERVICES FROM THE IHS

137.95 May a Self-Governance Tribe purchase goods and services from the IHS on a reimbursable basis?

PROMPT PAYMENT ACT

137.96 Does the Prompt Payment Act apply to funds transferred to a Self-Governance Tribe in a compact or funding agreement?

INTEREST OR OTHER INCOME ON TRANSFERS

137.100 May a Self-Governance Tribe retain and spend interest earned on any funds paid under a compact or funding agreement?

137.101 What standard applies to a Self-Governance Tribe's management of funds

Pt. 137

42 CFR Ch. I (10–1–05 Edition)

paid under a compact or funding agreement?

CARRYOVER OF FUNDS

137.105 May a Self-Governance Tribe carry-over from one year to the next any funds that remain at the end of the funding agreement?

PROGRAM INCOME

137.110 May a Self-Governance Tribe retain and expend any program income earned pursuant to a compact and funding agreement?

LIMITATION OF COSTS

137.115 Is a Self-Governance Tribe obligated to continue performance under a compact or funding agreement if the Secretary does not transfer sufficient funds?

STABLE BASE BUDGET

137.120 May a Self-Governance Tribe's funding agreement provide for a stable base budget?

137.121 What funds may be included in a stable base budget amount?

137.122 May a Self-Governance Tribe with a stable base budget receive other funding under its funding agreement?

137.123 Once stable base funding is negotiated, do funding amounts change from year to year?

137.124 Does the effective period of a stable base budget have to be the same as the term of the funding agreement?

Subpart H—Final Offer

137.130 What is covered by this subpart?

137.131 When should a final offer be submitted?

137.132 How does the Indian Tribe submit a final offer?

137.133 What does a final offer contain?

137.134 When does the 45-day review period begin?

137.135 May the Secretary request and obtain an extension of time of the 45-day review period?

137.136 What happens if the agency takes no action within the 45-day review period (or any extensions thereof)?

137.137 If the 45-day review period or extension thereto, has expired, and the Tribe's offer is deemed accepted by operation of law, are there any exceptions to this rule?

137.138 Once the Indian Tribe's final offer has been accepted or deemed accepted by operation of law, what is the next step?

REJECTION OF FINAL OFFERS

137.140 On what basis may the Secretary reject an Indian Tribe's final offer?

137.141 How does the Secretary reject a final offer?

137.142 What is a "significant danger" or "risk" to the public health?

137.143 How is the funding level to which the Indian Tribe is entitled determined?

137.144 Is technical assistance available to an Indian Tribe to avoid rejection of a final offer?

137.145 If the Secretary rejects a final offer, is the Secretary required to provide the Indian Tribe with technical assistance?

137.146 If the Secretary rejects all or part of a final offer, is the Indian Tribe entitled to an appeal?

137.147 Do those portions of the compact, funding agreement, or amendment not in dispute go into effect?

137.148 Does appealing the decision of the Secretary prevent entering into the compact, funding agreement or amendment?

Burden of Proof

137.150 What is the burden of proof in an appeal from rejection of a final offer?

DECISION MAKER

137.155 What constitutes a final agency action?

Subpart I—Operational Provisions

CONFLICTS OF INTEREST

137.160 Are Self-Governance Tribes required to address potential conflicts of interest?

AUDITS AND COST PRINCIPLES

137.165 Are Self-Governance Tribes required to undertake annual audits?

137.166 Are there exceptions to the annual audit requirements?

137.167 What cost principles must a Self-Governance Tribe follow when participating in self-governance under Title V?

137.168 May the Secretary require audit or accounting standards other than those specified in §137.167?

137.169 How much time does the Federal Government have to make a claim against a Self-Governance Tribe relating to any disallowance of costs, based on an audit conducted under §137.165?

137.170 When does the 365-day period commence?

137.171 Where do Self-Governance Tribes send their audit reports?

137.172 Should the audit report be sent anywhere else to ensure receipt by the Secretary?

137.173 Does a Self-Governance Tribe have a right of appeal from a disallowance?

RECORDS

137.175 Is a Self-Governance Tribe required to maintain a recordkeeping system?

Public Health Service, HHS

Pt. 137

137.176 Are Tribal records subject to the Freedom of Information Act and Federal Privacy Act?

137.177 Is the Self-Governance Tribe required to make its records available to the Secretary?

137.178 May Self-Governance Tribes store patient records at the Federal Records Centers?

137.179 May a Self-Governance Tribe make agreements with the Federal Records Centers regarding disclosure and release of the patient records stored pursuant to § 137.178?

137.180 Are there other laws that govern access to patient records?

REDESIGN

137.185 May a Self-Governance Tribe redesign or consolidate the PSFAs that are included in a funding agreement and re-allocate or redirect funds for such PSFAs?

NON-DUPLICATION

137.190 Is a Self-Governance Tribe that receives funds under Title V also entitled to contract under section 102 of the Act [25 U.S.C. 450(f)] for such funds?

HEALTH STATUS REPORTS

137.200 Are there reporting requirements for Self-Governance Tribes under Title V?

137.201 What are the purposes of the Tribal reporting requirements?

137.202 What types of information will Self-Governance Tribes be expected to include in the reports?

137.203 May a Self-Governance Tribe participate in a voluntary national uniform data collection effort with the IHS?

137.204 How will this voluntary national uniform data set be developed?

137.205 Will this voluntary uniform data set reporting activity be required of all Self-Governance Tribes entering into a compact with the IHS under Title V?

137.206 Why does the IHS need this information?

137.207 Will funding be provided to the Self-Governance Tribe to compensate for the costs of reporting?

SAVINGS

137.210 What happens if self-governance activities under Title V reduce the administrative or other responsibilities of the Secretary with respect to the operation of Indian programs and result in savings?

137.211 How does a Self-Governance Tribe learn whether self-governance activities have resulted in savings as described in § 137.210.

ACCESS TO GOVERNMENT FURNISHED PROPERTY

137.215 How does a Self-Governance Tribe obtain title to real and personal property furnished by the Federal Government for use in the performance of a compact, funding agreement, construction project agreement, or grant agreement pursuant to section 512(c) of the Act [25 U.S.C. 458aaa-11(c)]?

MATCHING AND COST PARTICIPATION REQUIREMENTS

137.217 May funds provided under compacts, funding agreements, or grants made pursuant to Title V be treated as non-Federal funds for purposes of meeting matching or cost participation requirements under any other Federal or non-Federal program?

FEDERAL TORT CLAIMS ACT (FTCA)

137.220 Do section 314 of Public Law 101-512 [25 U.S.C. 450f note] and section 102(d) of the Act [25 U.S.C. 450f(d)] (regarding, in part, FTCA coverage) apply to compacts, funding agreements and construction project agreements?

Subpart J—Regulation Waiver

137.225 What regulations may be waived under Title V?

137.226 How does a Self-Governance Tribe request a waiver?

137.227 How much time does the Secretary have to act on a waiver request?

137.228 Upon what basis may the waiver request be denied?

137.229 What happens if the Secretary neither approves or denies a waiver request within the time specified in § 137.227.

137.230 Is the Secretary's decision on a waiver request final for the Department?

137.231 May a Self-Governance Tribe appeal the Secretary's decision to deny its request for a waiver of a regulation promulgated under section 517 of the Act [25 U.S.C. 458aaa-16]?

Subpart K—Withdrawal

137.235 May an Indian Tribe withdraw from a participating inter-Tribal consortium or Tribal organization?

137.236 When does a withdrawal become effective?

137.237 How are funds redistributed when an Indian Tribe fully or partially withdraws from a compact or funding agreement and elects to enter a contract or compact?

137.238 How are funds distributed when an Indian Tribe fully or partially withdraws from a compact or funding agreement administered by an inter-Tribal consortium

or Tribal organization serving more than one Indian Tribe and the withdrawing Indian Tribe elects not to enter a contract or compact?

- 137.239 If the withdrawing Indian Tribe elects to operate PSFAs carried out under a compact or funding agreement under Title V through a contract under Title I, is the resulting contract considered a mature contract under section 4(h) of the Act [25 U.S.C. 450b(h)]?

Subpart L—Retrocession

- 137.245 What is retrocession ?
- 137.246 How does a Self-Governance Tribe retrocede a PSFA?
- 137.247 What is the effective date of a retrocession?
- 137.248 What effect will a retrocession have on a retroceding Self-Governance Tribe's rights to contract or compact under the Act?
- 137.249 Will retrocession adversely affect funding available for the retroceded program?
- 137.250 How are funds distributed when a Self-Governance Tribe fully or partially retrocedes from its compact or funding agreement?
- 137.251 What obligation does the retroceding Self-Governance Tribe have with respect to returning property that was provided by the Secretary under the compact or funding agreement and that was used in the operation of the retroceded program?

Subpart M—Reassumption

- 137.255 What does reassumption mean?
- 137.256 Under what circumstances may the Secretary reassume a program, service, function, or activity (or portion thereof)?
- 137.257 What steps must the Secretary take prior to reassumption becoming effective?
- 137.258 Does the Self-Governance Tribe have a right to a hearing prior to a non-immediate reassumption becoming effective?
- 137.259 What happens if the Secretary determines that the Self-Governance Tribe has not corrected the conditions that the Secretary identified in the notice?
- 137.260 What is the earliest date on which a reassumption can be effective?
- 137.261 Does the Secretary have the authority to immediately reassume a PSFA?
- 137.262 If the Secretary reassumes a PSFA immediately, when must the Secretary provide the Self-Governance Tribe with a hearing?
- 137.263 May the Secretary provide a grant to a Self-Governance Tribe for technical assistance to overcome conditions identified under §137.257?
- 137.264 To what extent may the Secretary require the Self-Governance Tribe to re-

turn property that was provided by the Secretary under the compact or funding agreement and used in the operation of the reassume program?

- 137.265 May a Tribe be reimbursed for actual and reasonable close out costs incurred after the effective date of reassumption?

Subpart N—Construction

PURPOSE AND SCOPE

- 137.270 What is covered by this subpart?
- 137.271 Why is there a separate subpart in these regulations for construction project agreements?
- 137.272 What other alternatives are available for Self-Governance Tribes to perform construction projects?
- 137.273 What are IHS construction PSFAs?
- 137.274 Does this subpart cover construction programs?
- 137.275 May Self-Governance Tribes include IHS construction programs in a construction project agreement or in a funding agreement?

CONSTRUCTION DEFINITIONS

- 137.280 Construction definitions.

NEPA PROCESS

- 137.285 Are Self-Governance Tribes required to accept Federal environmental responsibilities to enter into a construction project agreement?
- 137.286 Do Self-Governance Tribes become Federal agencies when they assume these Federal environmental responsibilities?
- 137.287 What is the National Environmental Policy Act (NEPA)?
- 137.288 What is the National Historic Preservation Act (NHPA)?
- 137.289 What is a Federal undertaking under NHPA?
- 137.290 What additional provisions of law are related to NEPA and NHPA?
- 137.291 May Self-Governance Tribes carry out construction projects without assuming these Federal environmental responsibilities?
- 137.292 How do Self-Governance Tribes assume environmental responsibilities for construction projects under section 509 of the Act [25 U.S.C. 458aaa–8]?
- 137.293 Are Self-Governance Tribes required to adopt a separate resolution or take equivalent Tribal action to assume environmental responsibilities for each construction project agreement?
- 137.294 What is the typical IHS environmental review process for construction projects?
- 137.295 May Self-Governance Tribes elect to develop their own environmental review process?

Public Health Service, HHS

Pt. 137

- 137.296 How does a Self-Governance Tribe comply with NEPA and NHPA?
- 137.297 If the environmental review procedures of a Federal agency are adopted by a Self-Governance Tribe, is the Self-Governance Tribe responsible for ensuring the agency's policies and procedures meet the requirements of NEPA, NHPA, and related environmental laws?
- 137.298 Are Self-Governance Tribes required to comply with Executive Orders to fulfill their environmental responsibilities under section 509 of the Act [25 U.S.C. 458aaa-8]?
- 137.299 Are Federal funds available to cover the cost of Self-Governance Tribes carrying out environmental responsibilities?
- 137.300 Since Federal environmental responsibilities are new responsibilities which may be assumed by Tribes under section 509 of the Act [25 U.S.C. 458aaa-8], are there additional funds available to Self-Governance Tribes to carry out these formerly inherently Federal responsibilities?
- 137.301 How are project and program environmental review costs identified?
- 137.302 Are Federal funds available to cover start-up costs associated with initial Tribal assumption of environmental responsibilities?
- 137.303 Are Federal or other funds available for training associated with Tribal assumption of environmental responsibilities?
- 137.304 May Self-Governance Tribes buy back environmental services from the IHS?
- 137.305 May Self-Governance Tribes act as lead, cooperating, or joint lead agencies for environmental review purposes?
- 137.306 How are Self-Governance Tribes recognized as having lead, cooperating, or joint lead agency status?
- 137.307 What Federal environmental responsibilities remain with the Secretary when a Self-Governance Tribe assumes Federal environmental responsibilities for construction projects under section 509 of the Act [25 U.S.C. 458aaa-8]?
- 137.308 Does the Secretary have any enforcement authority for Federal environmental responsibilities assumed by Tribes under Section 509 of the Act?
- 137.309 How are NEPA and NHPA obligations typically enforced?
- 137.310 Are Self-Governance Tribes required to grant a limited waiver of their sovereign immunity to assume Federal environmental responsibilities under Section 509 of the Act [25 U.S.C. 458aaa-8]?
- 137.311 Are Self-Governance Tribes entitled to determine the nature and scope of the limited immunity waiver required under section 509(a)(2) of the Act?
- 137.312 Who is the proper defendant in a civil enforcement action under section

509(a)(2) of the Act [25 U.S.C. 458aaa-8(a)(2)]?

NOTIFICATION (PRIORITIZATION PROCESS, PLANNING, DEVELOPMENT AND CONSTRUCTION)

- 137.320 Is the Secretary required to consult with affected Indian Tribes concerning construction projects and programs?
- 137.321 How do Indian Tribes and the Secretary identify and request funds for needed construction projects?
- 137.322 Is the Secretary required to notify an Indian Tribe that funds are available for a construction project or a phase of a project?

PROJECT ASSUMPTION PROCESS

- 137.325 What does a Self-Governance Tribe do if it wants to perform a construction project under section 509 of the Act [25 U.S.C. 458aaa-8]?
- 137.326 What must a Tribal proposal for a construction project agreement contain?
- 137.327 May multiple projects be included in a single construction project agreement?
- 137.328 Must a construction project proposal incorporate provisions of Federal construction guidelines and manuals?
- 137.329 What environmental considerations must be included in the construction project agreement?
- 137.330 What happens if the Self-Governance Tribe and the Secretary cannot develop a mutually agreeable construction project agreement?
- 137.331 May the Secretary reject a final construction project proposal based on a determination of Tribal capacity or capability?
- 137.332 On what bases may the Secretary reject a final construction project proposal?
- 137.333 What procedures must the Secretary follow if the Secretary rejects a final construction project proposal, in whole or in part?
- 137.334 What happens if the Secretary fails to notify the Self-Governance Tribe of a decision to approve or reject a final construction project proposal within the time period allowed?
- 137.335 What costs may be included in the budget for a construction agreement?
- 137.336 What is the difference between fixed-price and cost-reimbursement agreements?
- 137.337 What funding must the Secretary provide in a construction project agreement?
- 137.338 Must funds from other sources be incorporated into a construction project agreement?
- 137.339 May the Self-Governance Tribe use project funds for matching or cost participation requirements under other Federal and non-Federal programs?

- 137.340 May a Self-Governance Tribe contribute funding to a project?
- 137.341 How will a Self-Governance Tribe receive payment under a construction project agreement?
- 137.342 What happens to funds remaining at the conclusion of a cost reimbursement construction project?
- 137.343 What happens to funds remaining at the conclusion of a fixed price construction project?
- 137.344 May a Self-Governance Tribe reallocate funds among construction project agreements?

ROLES OF SELF-GOVERNANCE TRIBE IN ESTABLISHING AND IMPLEMENTING CONSTRUCTION PROJECT AGREEMENTS

- 137.350 Is a Self-Governance Tribe responsible for completing a construction project in accordance with the negotiated construction project agreement?
- 137.351 Is a Self-Governance Tribe required to submit construction project progress and financial reports for construction project agreements?
- 137.352 What is contained in a construction project progress report?
- 137.353 What is contained in a construction project financial report?

ROLES OF THE SECRETARY IN ESTABLISHING AND IMPLEMENTING CONSTRUCTION PROJECT AGREEMENTS

- 137.360 Does the Secretary approve project planning and design documents prepared by the Self-Governance Tribe?
- 137.361 Does the Secretary have any other opportunities to approve planning or design documents prepared by the Self-Governance Tribe?
- 137.362 May construction project agreements be amended?
- 137.363 What is the procedure for the Secretary's review and approval of amendments?
- 137.364 What constitutes a significant change in the original scope of work?
- 137.365 What is the procedure for the Secretary's review and approval of project planning and design documents submitted by the Self-Governance Tribe?
- 137.366 May the Secretary conduct onsite project oversight visits?
- 137.367 May the Secretary issue a stop work order under a construction project agreement?
- 137.368 Is the Secretary responsible for oversight and compliance of health and safety codes during construction projects being performed by a Self-Governance Tribe under section 509 of the Act [25 U.S.C. 488aaa–8]?

OTHER

- 137.370 Do all provisions of this part apply to construction project agreements under this subpart?
- 137.371 Who takes title to real property purchased with funds provided under a construction project agreement?
- 137.372 Does the Secretary have a role in the fee-to-trust process when real property is purchased with construction project agreement funds?
- 137.373 Do Federal real property laws, regulations and procedures that apply to the Secretary also apply to Self-Governance Tribes that purchase real property with funds provided under a construction project agreement?
- 137.374 Does the Secretary have a role in reviewing or monitoring a Self-Governance Tribe's actions in acquiring or leasing real property with funds provided under a construction project agreement?
- 137.375 Are Tribally-owned facilities constructed under section 509 of the Act [25 U.S.C. 458aaa–8] eligible for replacement, maintenance, and improvement funds on the same basis as if title to such property were vested in the United States?
- 137.376 Are design and construction projects performed by Self-Governance Tribes under section 509 of the Act [25 U.S.C. 458aaa–8] subject to Federal metric requirements?
- 137.377 Do Federal procurement law and regulations apply to construction project agreements performed under section 509 of the Act [25 U.S.C. 458aaa–8]?
- 137.378 Does the Federal Davis-Bacon Act and wage rates apply to construction projects performed by Self-Governance Tribes using their own funds or other non-Federal funds?
- 137.379 Do Davis-Bacon wage rates apply to construction projects performed by Self-Governance Tribes using Federal funds?

Subpart O—Secretarial Responsibilities

BUDGET REQUEST

- 137.401 What role does Tribal consultation play in the IHS annual budget request process?

REPORTS

- 137.405 Is the Secretary required to report to Congress on administration of Title V and the funding requirements presently funded or unfunded?
- 137.406 In compiling reports pursuant to this section, may the Secretary impose any reporting requirements on Self-Governance Tribes, not otherwise provided in Title V?
- 137.407 What guidelines will be used by the Secretary to compile information required for the report?

Subpart P—Appeals

137.410 For the purposes of section 110 of the Act [25 U.S.C. 450m-1] does the term “contract” include compacts, funding agreements, and construction project agreements entered into under Title V?

POST-AWARD DISPUTES

137.412 Do the regulations at 25 CFR Part 900, Subpart N apply to compacts, funding agreements, and construction project agreements entered into under Title V?

PRE-AWARD DISPUTES

137.415 What decisions may an Indian Tribe appeal under §§ 137.415 through 137.436?

137.416 Do §§ 137.415 through 137.436 apply to any other disputes?

137.417 What procedures apply to Interior Board of Indian Appeals (IBIA) proceedings?

137.418 How does an Indian Tribe know where and when to file its appeal from decisions made by IHS?

137.419 What authority does the IBIA have under §§ 137.415 through 137.436?

137.420 Does an Indian Tribe have any options besides an appeal?

137.421 How does an Indian Tribe request an informal conference?

137.422 How is an informal conference held?

137.423 What happens after the informal conference?

137.424 Is the recommended decision from the informal conference final for the Secretary?

137.425 How does an Indian Tribe appeal the initial decision if it does not request an informal conference or if it does not agree with the recommended decision resulting from the informal conference?

137.426 May an Indian Tribe get an extension of time to file a notice of appeal?

137.427 What happens after an Indian Tribe files an appeal?

137.428 How is a hearing arranged?

137.429 What happens when a hearing is necessary?

137.430 What is the Secretary’s burden of proof for appeals covered by § 137.145?

137.431 What rights do Indian Tribes and the Secretary have during the appeal process?

137.432 What happens after the hearing?

137.433 Is the recommended decision always final?

137.434 If an Indian Tribe objects to the recommended decision, what will the Secretary do?

137.435 Will an appeal adversely affect the Indian Tribe’s rights in other compact, funding negotiations, or construction project agreements?

137.436 Will the decisions on appeal be available for the public to review?

APPEALS OF AN IMMEDIATE REASSUMPTION OF A SELF-GOVERNANCE PROGRAM

137.440 What happens in the case of an immediate reassumption under section 507(a)(2)(C) of the Act [25 U.S.C. 458aaa-6(a)(2)(C)]?

137.441 Will there be a hearing?

137.442 What happens after the hearing?

137.443 Is the recommended decision always final?

137.444 If a Self-Governance Tribe objects to the recommended decision, what action will the Secretary take?

137.445 Will an immediate reassumption appeal adversely affect the Self-Governance Tribe’s rights in other self-governance negotiations?

EQUAL ACCESS TO JUSTICE ACT FEES

137.450 Does the Equal Access to Justice Act (EAJA) apply to appeals under this subpart?

AUTHORITY: 25 U.S.C. 458 *et seq.*

SOURCE: 67 FR 35342, May 17, 2002, unless otherwise noted.

Subpart A—General Provisions**§ 137.1 Authority, purpose and scope**

(a) **Authority.** These regulations are prepared, issued and maintained with the active participation and representation of Indian Tribes, Tribal organizations and inter-Tribal consortia pursuant to the guidance of the negotiated rulemaking procedures required by section 517 of the Act [25 U.S.C. 458aaa-16].

(b) **Purpose.** These regulations codify rules for self-governance compacts, funding agreements, and construction project agreements between the Department of Health and Human Services (DHHS) and Self-Governance Tribes to implement sections 2, 3, and 4 of Pub. L. 106-260.

(c) **Scope.** These regulations are binding on the Secretary and on Indian Tribes carrying out programs, services, functions, and activities (or portions thereof) (PSFAs) under Title V except as otherwise specifically authorized by a waiver under section 512(b) of the Act [25 U.S.C. 458aaa-11(b)].

(d) **Information collection.** The information collection requirements have been submitted to the Office of Management and Budget (OMB) and are pending OMB approval.